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Attorney for Plaintiff

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH CENTRAL DIVISION

BEUS GILBERT PLLC vs. DONALD ROBERTSON, BRIGHAM YOUNG UNIVERSITY, WEILIN XIE, AND DANIEL L. SIMMONS Defendants.	Plaintiff, Case Number: 2:14-cv-00206-BCW COMPLAINT IN INTERPLEADER
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Plaintiff Beus Gilbert PLLC (hereinafter referred to as “Beus Gilbert”) for its claim for relief in interpleader alleges as follows:

NATURE OF INTERPLEADER

This interpleader action, brought pursuant to 28 U.S.C. § 1335 and Rule 22 of the Federal Rules of Civil Procedure, is initiated to determine which Defendant is entitled to receive the funds deposited with the Court and available by way of a settlement between Brigham Young University, Dr. Daniel L. Simmons, and Pfizer, Inc., arising out of litigation in the District of Utah.

PARTIES

1. Plaintiff Beus Gilbert is a professional limited liability company organized under the laws of Arizona.

2. Upon information and belief, Defendant Donald Robertson (“Dr. Robertson”) is a resident of San Diego County, California. During the time period relevant to the dispute between Dr. Robertson and BYU, described below, Dr. Robertson was residing in Utah County, Utah, and working at BYU as a professor.

3. Upon information and belief, Defendant Weilin Xie (“Dr. Xie”) is a resident of San Diego County, California. During the time period relevant to the dispute between Dr. Xie and BYU, described below, Dr. Xie was residing in Utah County, Utah, and attending BYU as a graduate student.

4. Defendant Daniel L. Simmons (“Dr. Simmons”) is a resident of Utah County, Utah.

5. Defendant Brigham Young University (“BYU”) has its primary place of business in Utah County, Utah.

VENUE AND JURISDICTION

6. Venue is proper in the above-entitled court pursuant to 28 U.S.C. § 1397 in that Defendant BYU has its principal place of business in Utah County, Utah.

7. Jurisdiction is proper pursuant to 28 U.S.C. § 1335 because Dr. Robertson and Dr. Xie are residents of California, and Dr. Simmons and BYU are residents of Utah. In addition, the funds interpleaded into the Court exceed \$500.

CLAIM FOR RELIEF

8. Beus Gilbert represented Dr. Simmons and BYU in the case *BYU v. Pfizer*, 2:06-CV-890-TS (BCW), in the United States District Court for the District of Utah. That case settled in April 2012. Pursuant to the settlement agreement, Pfizer wired a settlement payment to Beus Gilbert in June 2012.

9. After receiving the settlement, Beus Gilbert disbursed the funds as directed by BYU, except for one million dollars (\$1,000,000) that BYU instructed Beus Gilbert to retain for Dr. Weilin Xie, a former graduate student at BYU.

10. Dr. Xie claimed he was entitled to a larger percentage of the developer funds, and he failed to sign the agreement that would allow Beus Gilbert to disburse those funds held in the firm's trust account for his benefit per the instructions of our client, BYU. At the same time, Dr. Simmons claimed that Dr. Xie was not entitled to any of the funds, including one million dollars (\$1,000,000) retained by Beus Gilbert.

11. Beus Gilbert was concerned that it would be exposed to double or multiple liability for the funds remaining in its possession. Accordingly, Beus Gilbert filed a complaint in interpleader on October 17, 2012, Case No. 2:12cv00970-RJS, and interpleaded the funds with the Court.

12. Dr. Simmons filed a cross-claim against Dr. Xie on January 10, 2013, and BYU filed a cross-claim against Dr. Xie and Dr. Simmons. On March 11, 2013, BYU filed a motion to stay the proceedings pending internal administrative proceedings, and on September 26, 2013, the Court granted the stay.

13. On February 25, 2014, BYU's administrative proceedings terminated in a confidential resolution. The stay in the interpleader case was extended until March 31, 2014.

14. On March 11, 2014, Beus Gilbert was notified that Dr. Robertson was also making a claim to developer funds, a portion of which is the one million (\$1,000,000) in Beus Gilbert's possession and which has been interpled with the Court.

15. The rights of each of the Defendants to the interpled funds should be ascertained and determined by this Court in this proceeding. Pursuant to 28 U.S.C. § 2361, the Court should restrain Dr. Robertson, Dr. Xie, BYU, and Dr. Simmons from instituting, prosecuting, or proceeding with any action affecting the \$1,000,000, and issue any injunctive order necessary to accomplish this end.

16. Beus Gilbert has deposited with the Clerk of Court the sum of one million dollars (\$1,000,000).

WHEREFORE, Plaintiff Beus Gilbert prays for relief as follows:

- A. Require Defendants to litigate their differences;
- B. Restrain each of the Defendants from instituting any action against Plaintiff for the recovery of the monies, or any part thereof, that are the subject of this action;
- C. Determine which of the Defendants is entitled to the monies that are the subject of this action;
- D. Enjoin Defendants from prosecuting, or proceeding with any action affecting the \$1,000,000;
- E. Discharge Plaintiff from any and all liability;
- F. Grant Plaintiff any other relief the Court deems just and proper.

DATED this 19th day of March 2014.

By _____ */s/ Lee M. Andelin*

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